

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ANWAR, *et al.*,

Plaintiffs,

v.

FAIRFIELD GREENWICH LIMITED, *et al.*,

Defendants.

Master File No. 09-cv-118 (VM)

**DERIVATIVE PLAINTIFFS' SUPPLEMENTAL MEMORANDUM
IN FURTHER SUPPORT OF OBJECTION TO PROPOSED SETTLEMENT**

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Derivative Plaintiffs Morning Mist Holdings Ltd. and Miguel Lomeli respectfully submit this supplement in further support of their Objection to the Proposed Settlement. After the Objection was filed, Lead Counsel filed the declaration of their foreign law expert, Professor Jonathan Harris, in support of their class certification motion. Professor Harris states:

A related difficulty is that English proceedings may also require the absent class members to *compete with* the BMIS Trustee, the liquidators and administrators of the Fairfield Greenwich Funds in settlement discussions and in executing against available assets.

See Harris Declaration, Doc. 1048, ¶ 153 (emphasis supplied).

Professor Harris' statement supports Objectors' position that, given the FG Defendants' "depleted finances" (as so characterized by Lead Counsel, *see* Doc. 1035, ¶ 131), Lead Counsel cannot adequately represent Sentry because they have negotiated a class action settlement that competes with and, broadly read, purports to enjoin class members from prosecuting the far more valuable Derivative Action on behalf of Sentry. *See* Objection, Doc. 1047, at 10-11. The statement also supports Objector's position that the settlement violates the principles of *National Super Spuds, Inc. v. N.Y. Mercantile Exchange*, 660 F.2d 9 (2d Cir. 1981).

Dated: February 19, 2013

Respectfully submitted,

MILBERG LLP

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